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**State of Utah****Department of
Natural Resources**

MICHAEL R. STYLER
Executive Director

**Division of
Oil, Gas & Mining**

JOHN R. BAZA
Division Director

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

September 7, 2005

Allen D. Klein, Western Division Director
Office of Surface Mining
1999 Broadway, Suite 3320
P.O. Box 46667
Denver, Colorado 80201-6667

Subject: Request for Assistance in Coordinating Resolution of Conflicts and
Difficulties Between the Utah Division of Oil, Gas and Mining and the
U.S. Forest Service

Dear Mr. Klein:

This letter is to request that the Office of Surface Mining "assist" in "coordinating resolution of conflicts and difficulties" between the Utah Division of Oil, Gas and Mining (DOGM) and the U.S. Forest Service (USFS), pursuant to the Utah Cooperative Agreement between the Secretary of the Interior and the Governor of Utah (30 CFR 944.30).

The nature of Utah's difficulties with the U.S. Forest Service is two-fold. First is the recent last minute policy change by the USFS—more specifically the Manti-LaSal National Forest—in the previously agreed-upon schedule for processing a mining plan modification to the Deer Creek Coal Mine, called the North Rilda Canyon Portal Facilities. The Division of Oil, Gas and Mining and the coal operator, Interwest Mining, relied on time schedules developed jointly by the BLM, OSM, USFS and DOGM, over the course of nearly eighteen months (April 2004 to early August 2005). In early August 2005, the USFS suddenly decided it needed to conduct its own NEPA decision and solicit public comment on its own. They announced to DOGM that it was necessary for the USFS to take an independent, appeal-able action, which now adds up to 120 days on to the permitting action. Meanwhile, Interwest Mining anxiously awaits this mine plan modification in order to secure the necessary ventilation and access critical for continuing mining operations. Had this position been asserted early in the process, the parties may have been able to adjust their actions accordingly. As a result of the USFS action, emergency action had to be taken to allow the mine to "breakout" to the surface to obtain the much-needed air for the miners.

The USFS actions would be understandable if there were issues identified by the NEPA process that were of substance or of significant environmental impact. There were not. In fact, over the time frame noted above, there were two public outreach meetings, a published scoping period, and a 'permit completeness' newspaper publication. Such actions on the part of the USFS lack good cause and shut down the permitting process.

Utah's second difficulty with the USFS lies in DOGM's unsuccessful efforts at developing a Working Agreement for coal mine permitting actions. The Division of Oil, Gas and Mining has attempted to develop an agreement for over two years. Despite its efforts, each time DOGM believes it is close to signing the agreement, the USFS proposes new changes.

This issue of failed coordination with the USFS is not new. Utah DOGM has worked hard and has hosted many coordination activities in which OSM has been a full participant over the past five years:

- Monthly coal permitting coordination meetings and conference calls,
- Quarterly managerial level agency coordination meetings,
- Two professionally facilitated agency coordination meetings,
- Development of a joint agency mission statement: "The Coal Program Team Cooperatively facilitates coal mining in an environmentally sound manner that ensures maximum benefit to the public."
- Working Agreement development meetings (ICOP – Interagency Coal Operating Procedures) held over a two-year period,
- A high-level meeting, held 1-23-2004, among: the Regional Forester, Intermountain Region; Manti-LaSal National Forest Supervisor, yourself, OGM Director, Utah BLM State Office Director and OSM Field Office Director for Utah. **The January 2004 meeting was held to discuss coordination among the agencies during the leasing, permitting, and mine plan actions. An agreement was reached that the actions of leasing and mine plan approval were the only "Federal actions" involving coal mining on Federal lands. The BLM directs the leasing with associated NEPA, and OSM directs the mine plan approval and associated NEPA activities. The Forest Service is a welcome participant in these NEPA activities. The Forest Service agreed with BLM and OSM on this plan and that, therefore, there would be no need for the FS to undertake additional NEPA associated with its responsibility to provide comments and to concur as required.**

If Utah is to continue as the lead coal mine permitting agency in Utah, DOGM needs to be able to rely upon a Working Agreement that clearly identifies the agencies' roles, actions and responsibilities. It is clear that the lack of dependable coordinated actions is hurting the permitting process and the coal mining operations. Utah is asking for assistance from OSM, and looks forward to a

Page 3
Allen Klein
September 7, 2005

new day with the USFS pledging adherence to an agreed-upon processes. I express my thanks in advance for your assistance in defining a smooth and predictable coal mine permitting process.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary Ann Wright", written over the printed name.

Mary Ann Wright
Associate Director, Mining

Enclosures:

Chronology of Rilda project

August 29, 2005 USFS DN/FONSI

cc: Jeff Jarrett, Director, OSM
Jack Troyer, Regional Forester
Alice Carlton, Manti-LaSal NF
John Baza, Director, OGM
Mike Styler, Executive Director, DNR
David Litvin, Utah Mining Association
Bob King, VP Interwest Mining

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Utah OGM Chronology of North Rilda Canyon Portals Project

In addition to the meetings outlined below, ongoing meetings and conference calls involving the EA Core Team occurred approximately monthly. The USFS was involved in every meeting and/or call.

March 16, 2004 – OSM Determination of Mine Plan Modification

March 23, 2004

Meeting in Salt Lake City, called by Pete Rutledge (OSM) to announce the decision that the Rilda Expansion would be a Mine Plan Modification, that an EA would be written by DOGM on the behalf of OSM and that he has formally asked the USFS and BLM to be cooperating agencies. The reason the NEPA process was required was that the previous EA written in 1996 stated that there would be no additional surface disturbance, and that a separate NEPA action would be required if any surface facilities were proposed.

NEPA Core Team formed.

OSM	Bob Block
DOGM	Luci Malin, Susan White, Daron Haddock (Pam Grubaugh-Littig advising) (Daron later replaced by Wayne Hedberg)
BLM	Gregg Hudson
USFS	Carter Reed (Later replaced by Dale Harber)

Extended Team formed (interdisciplinary team) to include various resource specialists –

DOGM: Priscilla, Jerriann, Jim, Joe, Wayne W
USFS: Terry Nelson, Bruce Ellis, Tom Lloyd, Pam Jewkes,
Katherine Foster, Meisa Nyman, Kelle Reynolds
USFWS – Diana Whittington
DWR –Wildlife: Bill Bates, Leroy Mead, Craig Walker, Justin Hart
DWR – Water Rights: Mark Page, Daren Rasmussen
Emery County – Rex Funk

Initial schedule developed

March 31, 2004

Meeting held in Springville with the NEPA Core Team and others (Guy Davis, Rick Collins, Diana Whittington, Jason (ACOE), and PacifiCorp to go over initial proposal and schedule.

April 7, 2004

Field trip to Rilda with Pete, meeting afterwards in Huntington
Open house planned for Huntington to get public input

May 12, 2004

Open House in Huntington for public input – Scoping
A lot of concern about culvert

June 1, 2004

Pacificorp decided to remove culvert idea, back to the drawing board, PAP not submitted, scheduled for August.

July 15, 2004

Daron left the group Wayne joined

2nd open house planned for Huntington

June, July, August

PacifiCorp doing cultural, raptor, wildlife, vegetation, soil, macro-invertebrate studies.

August 8, 2004

Open House number 2 in Huntington Canyon – Proposal without culvert.

August 10, 2004

Luci gave presentation at Emery County Public Lands Council meeting in Castledale.

September 2, 2004

PAP received (never determined administratively complete)

Week of September 7, 2004

Carter Reed provides out line of Forest Service Decisions and Appeal ability for Rilda Canyon in which it states the FS concurrence would not be an appeal able decision.

September 10, 2004

Carter left the group, Dale joined

September 16, 2005

Internal scoping (agencies) meeting held in Provo with the NEPA team, other interested agencies (USFWS, ACOE, Division of Wildlife Resources, Division of Water Rights) and PacifiCorp. Created list of potential impacts by resource area.

Soil stockpile off permit area. USFS says that will cause them to have to make a decision and have to have a 45 day appeal plus waiting period.

October 2004

Chapters 1 and 2 DRAFTs written

November 1 and 2, 2004

EA team meets in Salt Lake City

November 3 and 4, 2004

EA team meets in Price with other specialists in Price to talk about potential impacts.

Lawyers divided the process – NEPA vs SMCRA

December 6, 2004

PacifiCorp withdraws PAP – redesign. Proposal will be ready end of month.

December 21, 2004

PAP submitted

January

Start Chapters 3 and 4

January 28, 2005

PAP determined administratively complete

February 2, 2005

Core team meeting in SLC and NEPA update and review for Title V people

February

Title V people reassigned to SMCRA part of project only

March 6, 2005

Chris Rohrer, AMRP, added to NEPA team

Third party reviewer added to NEPA process

April, May, June, early July

Several draft reviews – chapters 1, 2, 3, 4

Chapter 5 written

July 7, 2005

Dale Harber sends Wayne letter stating FS has reviewed the Mine Plan and found it to be consistent with lease plan and Forest Plan. OGM and OSM interpret this to be the FS concurrence letter.

July 22, 2005

EA out for Final review

August 2, 2005

Luci told Dale he was out of time and that OSM had moved the EA to their solicitor's office. We would be able to accept slight changes only.

August 3, 2005

E-mail from Mary Ann to staff stating Barry Burkhardt (USFS) has said they (FS) were willing to write a concurrence letter to OSM.

August 4, 2005

Dale requests from Pam letters that specify that the mine's action will constitute a Mine Plan Modification. He also requests information from the 1997 Mine Plan Decision Document that states "No additional surface disturbance except that

related to mining-induced subsidence will result from this action. Dale says the request is on behalf of Ken Pauers, USFS.

August 8, 2005

Dale calls Pam and states that the consent letter of July 6, 2005 is not consent letter.

August 17, 2005

Conf call with Pete, Mary Ann, Pam and Wayne to discuss what the retraction of the concurrence letter means and its impacts to the process.

August 22, 2005 9:00

Jim Kohler called Pam to consult regarding the R2P2 notification for the mine to move ahead and break out to the surface for air as recommended by an email Jim received on Friday August 19 from Alice Carlton.

August 22, 2005 9:30am

Conference call with OSM (Pete, Bob); DOGM (Pam, Wayne, Luci and Mark); BLM (Gregg) and USFS (Dale, Alice, Carter, Steve Rigby, Jeff Alexander and Barry Burkhardt came on late) Discussed proposed alternative of the mine breaking out and the need for the FS to have their concurrence viewed as a NEPA decision. Carter retracts his early written discussions regarding under what conditions the FS consent is an appeal able decision.

August 22, 2005 3:00pm

Conference call with OSM (Pete, Ron Singh); DOGM (Pam, Susan, Wayne, and Mark); BLM (Jim Kolher, Stan Perks, Jeff Mckenzie, Gregg) and USFS, Barry Burkhardt came on late), PacifiCorp (Chuck, Scott, Carl). Pam stated OGM's position that breaking out would be a surface disturbance and necessitate a NOV. The mine could not wait any longer. The FS was under direction to have their "concurrence" be an appeal able decision, because of consent language in the Mineral Leasing Act, which could add approximately 125 days before Mining Plan Approval. OSM would not forward the Mining Plan with out the necessary concurrence letter. The participants came to a resolution that the mine would submit a R2P2 request to the BLM to allow development of the fan breakout. The FS would allow the development of the fan portal if no surface equipment was used. OSM agreed this would not constitute a mine plan modification and could be accomplished with an amendment to the mine's current permit. OGM would require a permit amendment from the mine.

August 24, 2005 10:00am

BLM approved the R2P2 for the breakout. OGM approved an amendment for the breakout. Interwest still awaiting Mining Plan Approval.

August 29, 2005

Manti-LaSal National Forest issues its own DN/FONSI. Appeal time 45 days begins upon publication.

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United States
Department of
Agriculture

Forest
Service

Manti-La Sal
National Forest

Supervisor's Office
599 West Price River Drive
Price, UT 84501
Phone # (435) 637-2817
Fax # (435) 637-4940

1950/2820-4

Date: August 29, 2005

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9/7/05

DIV. OF OIL, GAS & MINING

Dear Interested Party:

Enclosed is a copy of the Decision Notice/Finding of No Significant Impact (DN/FONSI) to consent/concur to the terms of the mining plan approval and post mining land use for Federal Coal Leases U-06039, U-2810, SL-050862, and SL-051221. The leaseholder (PacifiCorp) has proposed to construct new surface facilities in Rilda Canyon for their Deer Creek Mine located in Emery County, Utah. The new facilities would include a ventilation fan, mine entry for personnel and materials, bath house, parking lot, office, shop, top soil storage area, and sediment ponds. An Environmental Assessment has been prepared by the USDI-Office of Surface Mining, in cooperation with the Forest Service and the Bureau of Land Management, to analyze the proposal. Rod Player, Acting Forest Supervisor of the Manti-La Sal National Forest, has signed a Decision Notice/Finding of No Significant Impact (DN/FONSI) to consent/concur to the terms of the mining plan approval and post-mining land use (Alternative 1, Approval of the Proposed Permit Application Package with Conditions) on August 25, 2005. Under Alternative 1, the Assistant Secretary of the Interior would approve PacifiCorp's proposed Mine Plan.

This decision is subject to appeal pursuant to 36 CFR part 215.11. Individuals or organizations that submitted substantive comments during the comment period may appeal this decision. Appeals must meet the content requirements of 36 CFR 215.14, as published in the Federal Register on June 4, 2003.

Appeals should be sent to: Regional Forster, Appeal Deciding Officer, 324 25th Street, Ogden, UT 84401; phone: (801) 625-5605, fax: (801) 625-5277; e-mail: appeals-intermtn-regional-office@fs.fed.us. E-mailed appeals must be submitted in MS Word (*.doc) or rich text format (*.rtf). Appeals may also be delivered to the above address, during regular business hours of 8:00 a.m. to 4:30 p.m, Monday-Friday, excluding federal holidays. The appeal, including any attachments, must be filed with the Appeal Deciding Officer within 45 days following the date of publication of this legal notice in the *Sun Advocate*. The date of publication of this legal notice in the *Sun Advocate* is the exclusive means for calculating the time to file an appeal. Those wishing to file an appeal should not rely upon dates or timeframe information provided by any other source.

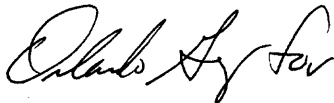
If no appeal is received within the 45-day time period, implementation of this decision may begin on, but not before, the 5th business day following the close of the appeal filing period. If an appeal is received, implementation may not occur for 15 business days following the date of appeal disposition.



This decision is also subject to appeal pursuant to 36 CFR 251.82. Notice of appeal must be postmarked or received by the Appeal Reviewing Officer within 45 days of the date of this decision. A notice of appeal, including the reasons for appeal, must be filed with the Regional Forester, Intermountain Region, Federal Building, 324 25th Street, Ogden, UT 84401. A copy of the notice of appeal must be filed simultaneously with Alice Carlton, Forest Supervisor, 599 West Price River Drive, Price, Utah 84501. Appeals must meet the content requirements of 36 CFR 251.90.

If additional information is needed, please contact Dale Harber at (435) 636-3548.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alice B. Carlton".

ALICE B. CARLTON
Forest Supervisor

Enclosure

Decision Notice
& Finding of No Significant Impact
**Mining Plan Modification, Federal Coal Leases U-06039,
U-2810, SL-050862, and SL-051221**

USDA Forest Service
Ferron-Price Ranger District, Manti-La Sal National Forest
Emery County, Utah

Decision and Reasons for the Decision

Background

PacifiCorp has proposed to construct new surface facilities in Rilda Canyon for their Deer Creek Mine located in Emery County, Utah. They have identified a need for access closer to the current mining area to reduce travel time for miners, provide for the safety of personnel, and for additional air intake to meet Mine Safety and Health Administration (MSHA) requirements. The USDI – Office of Surface Mining (OSM) has determined that this action constitutes a mining plan modification. An environmental assessment (EA) has been prepared by OSM in cooperation with the USDA – Forest Service and the USDI – Bureau of Land Management. The EA documents the analysis of two alternatives to meet this need.

As the surface management agency, the Forest Service must consent or concur to the post-mining land use and to the terms of the mining plan approval, under the authorities of the National Forest Management Act of 1976, the Federal Coal Leasing Amendments Act of 1976, and Federal Regulations contained in 30 CFR 740.4. 30 CFR 740.4(c)(2) states that one of OSM's responsibilities is:

“Consultation with and obtaining the consent, as necessary, of the Federal land management agency with respect to post-mining land use and to any special requirements necessary to protect non-coal resources of the areas affected by surface coal mining and reclamation operations.”

30 CFR 740.4(e)(4) states that the Federal land management agency is responsible for:

“Where land containing leased Federal coal is under the surface jurisdiction of a Federal agency other than the Department, concur in the terms of the mining plan approval.”

The Utah Division of Oil, Gas and Mining has issued a permit for the proposal and transmitted the Permit Application Package/Mine Plan and State permit to the Office of Surface Mining for review and issuance of a Mine Plan Decision Document by the Department of the Interior.

Decision

Based upon my review of the alternatives, I have decided to consent/concur to the terms of the mining plan approval and post-mining land use (Alternative 1, Approval of the Proposed Permit Application Package with Conditions). Under Alternative 1, the Assistant Secretary of the Interior would approve PacifiCorp's proposed Mine Plan, for expansion of the Deer Creek Mine surface facilities in Rilda Canyon onto National Forest System lands administered by the Manti-La Sal National Forest. These facilities would aid in mining Federal Coal Leases U-06039, U-2810, SL-050862, and SL-051221. PacifiCorp has the right to reasonable access to mine the coal in these leases. Mitigations needed to protect non-mineral interests, and assure consistency with lease stipulations and Forest Plan direction, have been designed into the Permit Application Package or required by the Utah Division of Oil, Gas and Mining in the mining permit.

When compared to the other alternatives this alternative will allow PacifiCorp to construct facilities necessary to mine coal from their Federal leases while protecting the other resources of the Manti-La Sal National Forest. This alternative meets requirements of the National Forest Management Act of 1976, the Federal Coal Leasing Amendments Act of 1975, and 30 CFR 740.4. It is consistent with direction in the Manti-La Sal National Forest Land and Resource Plan, as amended, and is consistent with stipulations in the coal leases.

Other Alternatives Considered

In addition to the selected alternative, I considered one other alternative, the No Action alternative (Alternative 2). Under the No Action alternative, the proposed mining plan would not be approved and management of the area would continue in its current state. A comparison of these alternatives can be found in the EA on pages 7 and 31 through 50.

Public Involvement

PacifiCorp submitted a permit revision application on December 21, 2004, proposing to construct new surface mine facilities in Rilda Canyon. Scoping letters were mailed to 49 Federal and state agencies and other interested parties on February 3, 2005. Notices were placed in the *Sun Advocate* and *Emery County Progress* newspapers on April 12, and August 11, 2004. Public meetings discussing the proposed action were held in Huntington, Utah, on May 12 and August 11, 2004. Fourteen responses were received from the scoping letters and the public meetings.

Using the comments from the public and internal scoping, the interdisciplinary team identified several issues regarding the effects of the proposed action (see EA, pages 6-8). Main issues of concern included potential impacts to wildlife and to surface and groundwater hydrology. To address these concerns, the ID Team evaluated the alternatives described above.

Finding of No Significant Impact

After considering the environmental effects described in the EA, I have determined that these actions will not have a significant effect on the quality of the human environment considering the context and intensity of impacts (40 CFR 1508.27). Thus, an environmental impact statement will not be prepared. I base my finding on the following:

1. My finding of no significant environmental effects is not biased by the beneficial effects of the action. My finding is based on an evaluation of both the benefits (safety for miners and economic benefits to PacifiCorp) and impacts to resources (see EA, page 7).
2. There will be no significant effects on public health and safety (see EA, Chapter 4). There will be moderate, short term impacts to big game, negligible, short term impacts to other game species and water quality, and minor, short term impacts to noise, air quality, recreation, and socioeconomics (see EA, page 7).
3. There will be no significant effects on unique characteristics of the area. The only unique feature of the project area is cottonwood riparian ecosystem along Rilda Creek, which is being maintained by moving the complete facility to the north and west to avoid the riparian area (see EA Sec. 2.3.2, page 12).
4. The effects on the quality of the human environment are not likely to be highly controversial. Because of the level of coal mining that has occurred on the Forest over many years, there is no known scientific controversy over the impacts of the project. The Genwal Mine was expanded to a similar facility on private land in Crandall Canyon, approximately 4 miles north of Rilda Canyon. Impacts are expected to be considerably less in Rilda Canyon because the facility will be constructed outside the area of the stream and there will be no loadout facility.
5. We have considerable experience with the types of activities to be implemented. There are 6 large coal mines on the Forest, including 3 located in narrow canyons (Genwal, SUFCO, and Trail Mountain). The effects analysis shows the effects are not uncertain, and do not involve unique or unknown risk (see EA, Chapter 4).
6. The action will not establish a precedent for future actions with significant effects, because only one specific facility is being approved. Additional environmental analyses would be required for any future proposals.
7. The cumulative impacts are not significant (see EA pages 52-54).
8. The action will have no significant adverse effect on districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places, because no historic properties have been identified within the proposal area (see EA pages 45-46). The action will also not cause loss or destruction of significant scientific, cultural, or historical resources, because these resources are not present within the proposal area (see EA pages 45-46).

The Utah State Historic Preservation Officer has been consulted and has concurred with these determinations (copy in Project Record File).

9. The action will not adversely affect any endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973 (see EA pages 32-33). The U.S. Fish and Wildlife Service has concurred with these determinations. Impacts to management indicator species is likely to be displacement of some individuals, but the populations as a whole would not be affected (Wildlife Resources Report, 2005).
10. The action will not violate Federal, State, or local laws or requirements for the protection of the environment. Applicable laws and regulations were considered in the EA (see EA pages 4-5). The action is consistent with the Manti-La Sal National Forest Land and Resource Management Plan (see EA page 5).

Findings Required by Other Laws and Regulations

This decision to consent to the post-mining land use and to the terms of the mining plan approval (Alternative 1) is consistent with the intent of the forest plan's long term goals and objectives listed on pages III-2 through III-6. The project was designed in conformance with land and resource management plan standards and incorporates appropriate land and resource management plan direction for minerals management (Land and Resource Management Plan, pages III-80 to III-82). The project area is within a Minerals Management Unit and a Range Management Unit. The Minerals Management Unit also encompasses a Riparian Area.

Minerals Management Unit

The Forest Plan guidance for a Minerals Management Unit is:

"Management emphasis is on making land surface available for existing and potential major mineral developments. This prescription is applied where the land surface is or will be used for facilities needed for the extraction of leasable minerals over an extended period. The areas associated with known, potential, or development sites are included in this unit. Additional areas may be added to this unit as mines or fields are located and developed. As the developments are removed and restoration is completed, these areas may be changed to other appropriate management units.

In units where mineral development is pending, renewable resource activities strive to be compatible with the management goals of adjacent management units. Long-term investments, such as timber planting, generally are not made. However, short-term investments, such as range and wildlife revegetation projects, may be made on these units."

This action is consistent with the Forest Plan guidance for a Minerals Management Unit by making the surface area available for a facility necessary for the extraction of leased

coal. The Forest Service, other agencies, and PacifiCorp have cooperated to develop this facility with the least possible impacts on other resources in the area.

Range Management Unit

The Forest Plan direction for minerals management activities within a Range Management Unit are:

"01 Provide appropriate mitigation measures to assure continued livestock access and use.

02 Those authorized to conduct developments will be required to replace losses through appropriate mitigations, where a site-specific development adversely affects long-term production or management."

This action is consistent with the Forest Plan guidance for a Range Management Unit. The area is still available for livestock use. Lease stipulations require the lessee to replace range facilities damaged by their activities.

Riparian Management Unit

The Forest Plan direction for minerals management activities within a Riparian Management Unit are:

"01 Avoid and mitigate detrimental disturbance to the riparian area by mineral activities. Initiate timely and effective rehabilitation of disturbed sites.

02 Where possible, locate mineral activities outside the riparian unit.

03 Design and locate settling ponds to prevent washout during high water. Locate settling ponds outside of the active channel. Restore channel changes to hydraulic geometry standards for each stream type."

This action is consistent with the Forest Plan guidance for a Riparian Management Unit. In order to minimize the effects to both the Riparian Management Unit, and the General Winter Range Management Unit just east of the project area, the Forest Service, other agencies, and PacifiCorp worked cooperatively to relocate facilities out of the riparian zone and as far from the General Winter Range Unit as possible to minimize impacts.

Other Laws

This decision is consistent with the National Forest Management Act, as described above in consistency with the Forest Plan.

This decision is consistent with the Clean Water Act. All water on the disturbed area is isolated from other surface waters, and is only discharged under the terms of a UPDES (Utah Pollution Discharge Elimination System) permit. Best management practices are

used in construction. Compliance with SMCRA (Surface Mining Control and Reclamation Act) requirements also assure compliance with the Clean Water Act.

Compliance with the Endangered Species Act is documented in the Biological Assessment/Biological Evaluation and Wildlife Resources Report prepared for this project.

Implementation Date

This project may be implemented 5 business days after the latest appeal period ends, if there is no appeal. If there is an appeal and this decision is upheld, it may be implemented on the 15th business day after the decision is upheld.

Administrative Review or Appeal Opportunities

This decision is subject to appeal in accordance with 36 CFR 215.11. A notice of appeal must be in writing and clearly state that it is a Notice of Appeal being filed in pursuant to 36 CFR 215.7. Appeals must be filed with Jack Troyer, Regional Forester, 324 25th Street, Ogden, Utah 84401, within 45 days of the date of Legal Notice of Decision in the *Sun Advocate* newspaper.

This decision is subject to appeal pursuant to 36 CFR 251.82. Notice of appeal must be postmarked or received by the Appeal Reviewing Officer within 45 days of the date of this decision. A notice of appeal, including the reasons for appeal, must be filed with the Regional Forester, Intermountain Region, Federal Building, 324-25th Street, Ogden, Utah 84401. A copy of the notice of appeal must be filed simultaneously with Alice Carlton, Forest Supervisor, 599 West Price River Drive, Price, Utah 84501. Appeals must meet the content requirements of 36 CFR 251.90.

Contact

For additional information concerning this decision or the Forest Service appeal process, contact Dale Harber, Manti-La Sal National Forest, Supervisor's Office, 599 W. Price River Dr., Price, Utah 84501, phone (435) 636-3548.

for Roch Plager
Alice B. Carlton
Forest Supervisor

8/25/2005
Date

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